

JONES, Jr., et al. - Serial No. 10/631,360  
Amendment After Final Rejection  
Docket: NBI-866A

### **REMARKS**

Claims 21, 25, 28, 38, 39, 44, 50, 51, and 52, have been amended, and claims 22, 26, 53, and 54 have been cancelled without prejudice or disclaimer. Upon entry of this amendment the claims in the case will be claims 21, 24, 25, 27-33, and 35-52. Claims 22 and 26 have been incorporated into claim 21, and claims 53 and 54 have been incorporated into claims 38 and 39, respectively, in a manner to positively recite method steps as requested by the Examiner. Claims 25 and 28 have been amended to change dependency in view of the cancellation of claim 22. Claims 44, 50, 51, and 52 have been amended to positively recite method steps as requested by the Examiner. The amendments do not introduce new matter, and they reduce the issues by reducing the number of claims and by clarifying the method steps as requested by the Examiner without requiring any additional searching. Accordingly, entry of the amendment is respectfully requested to place the application in condition for allowance or in better form for appeal.

#### **I. REJECTION UNDER 35 U.S.C. 102(a)**

Claims 21-22, 24-33 and 35-54 have been rejected under 35 U.S.C. 102(a) as being anticipated by Loewenthal et al. (U.S. patent no. 6,189,678). This rejection is respectfully traversed. Loewenthal et al does not teach or suggest measuring the stack

JONES, Jr., et al. - Serial No. 10/631,360  
Amendment After Final Rejection  
Docket: NBI-866A

height of a set number of articles (e.g. four articles) with an article gauge which is attached to a proportional shifter, and adjusting the proportional shifter for the change in stack height of the set number (the same number) of articles (e.g. four articles) as claimed. Adjusting the proportional shifter for a change in stack height is different from adjusting the proportional shifter for removing a different number of articles from a stack. Both steps are performed in applicants' invention using an article gauge as clearly set forth in applicant's claim 21 but are not performed in the Loewenthal et al method.

Changes in stack height for a fixed number or set number of articles occur, in the case of baked goods, because of changes in batches of dough composition or lay time, or baking conditions. For example, a set of four crackers in a stack may have a stack height of 1.12 inches at one point in a process, but later in the process a stack of four crackers (the same number of crackers) may have a stack height of only 0.80 inches. In applicant's claimed process, the proportional shifter is adjusted to take into account the change in stack height of 0.32 in. (1.12" minus 0.80") for the four crackers. This adjustment for a change in stack height of the same number of crackers is illustrated in FIG. 7 and described in the Example (paragraphs [0047]-[0050]), with distance 33 for proportional shifter 21C representing the change in stack height (0.32") for the four articles.

In addition, in applicants' claimed method, the proportional shifter is adjusted to change the number of articles or crackers removed from the stack and the adjustment for

JONES, Jr., et al. - Serial No. 10/631,360  
Amendment After Final Rejection  
Docket: NBI-866A

the change in stack height is proportionally made for the different number of articles which are removed: the adjustment is made for the new thickness of the crackers. This adjustment for the change in the number of articles or crackers removed from the stack is illustrated in FIG. 7 and described in the Example (paragraphs [0047]-[0050]) with distance 31 for proportional shifter 21C representing the change from removal of 4 articles to the removal of 3 articles (the new thickness of one articles or cracker).

Loewenthal et al does not teach or suggest an article gauge attached to a proportional shifter, measuring stack height with the article gauge, and adjusting a proportional shifter for the change in stack height as claimed in independent claims 21 and 33 and dependent claim 52. Loewenthal et al discloses removing a different number of articles from a stack, but does not disclose use of an article gauge for measuring stack height or for adjusting the proportional shifter for a change in stack height as claimed. See col. 6 lines 5-7.

The Examiner maintains that elements 38a, 50, 52, and 59 of Loewenthal et al constitute an article gauge. However, element 50 is a carrier for slide plate 38a and element 52 is a drive for the carrier 50. Element 59 is a drive for another carrier 56. These elements are employed to support the lowermost item 12 of the stack 24 of articles. They may be used to vertically move the articles a distance which is a multiple of the thickness of an article. See col. 5 lines 13-54 and FIGS. 9-10. However, there is no top

JONES, Jr., et al. - Serial No. 10/631,360  
Amendment After Final Rejection  
Docket: NBI-866A

element for measuring the stack height. The elements of Loewenthal do not constitute an article gauge, they are not used to measure the stack height of a set number of articles, and they are not attached to a proportional shifter as claimed..

The Examiner alleges that elements 38a, 50, 52, and 59 (Loewenthal et al's alleged "gauge") controls stack height and the angular position sensors included with drives 52 and 59 senses stack height. However, stack height is not controlled by a gauge. Stack height variation is caused by variations in article thickness before entering the stacking apparatus, such as by changes in batches of dough composition or lay time, or baking conditions in the case of crackers. The angular sensors of Loewenthal et al are not used to measure a change in stack height for a given number of articles as claimed. The angular sensors of Loewenthal et al are used as drives 52 and 59 to control the position of the carriers 50, 56 which are used to vertically move the supports for the lowermost item 12 of the stack 24 of articles. See col. 5 line 65 to col. 6 line 9. The sensors of Loewenthal et al are used for removing different numbers of articles from the chute 16a, not for measuring stack height and adjusting the proportional shifter for changes in the stack height for a given or the same number of items in a stack of articles. See col. 5 lines 14-64 and col. 6 lines 5-7.

In addition, with regard to claims 38, 39, 50, and 51, Loewenthal et al does not teach or suggest an article gauge attached to a proportional shifter, measuring stack height

JONES, Jr., et al. - Serial No. 10/631,360  
Amendment After Final Rejection  
Docket: NBI-866A

with the article gauge, and removing a number of articles from a stack which is different from the number of articles placed in the article gauge as claimed. As illustrated in FIG. 7, for proportional shifters 21B, 21C, and 21D, the article gauge 30 is separate from the vertically adjustable article rest 28 for the articles 27 removed from the article chute, so the number of articles placed in the article gauge 30 can be different from the number of articles removed from the adjustable article rest 28. However, in the apparatus and method of Loewenthal et al, if as alleged by the Examiner the elements 38a, 50, 52, and 59 constitute an article gauge then it is not seen how a number of articles can be removed from a stack which is different from the number of articles placed in the article gauge as claimed. In the Loewenthal et al apparatus and method, there is only one stack of articles, with the number of articles being pushed out of the chute 16a onto the vertically moveable support being the same as the number of articles removed from the vertically movable support. See col. 5 lines 38-54.

Reconsideration and withdrawal of the rejection is respectfully requested.

## II. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the

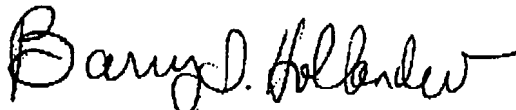
JONES, Jr., et al. - Serial No. 10/631,360  
Amendment After Final Rejection  
Docket: NBI-866A

undersigned would be appreciated since this should expedite the prosecution of the application.

A request for a one month extension of time is being filed concurrently herewith.

Any fees should be charged to, or any overpayment in fees should be credited to,  
Deposit Account No. 501032 (Docket #NBI-866A).

Respectfully submitted,



Barry I. Hollander  
Reg. No. 28,566

Hollander Law Firm, P.L.C.  
Suite 305, 10300 Eaton Place  
Fairfax, Virginia 22030  
Tel: (703) 383-4800  
Fax: (703) 383-4804

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